

December 1, 2006

*Via Hand Delivery*

Jeff S. Jordan, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2006 DEC - 1 P 3

**Re: MURs 5824 and 5825  
Respondents Pennsylvania Democratic State Committee and James Byrnes,  
Treasurer and Lois Murphy for Congress and Katherine A. Rowe, Treasurer**

Dear Mr. Jordan:

We are responding jointly on behalf of the Pennsylvania Democratic Party and, Ann M. Bursis, as Treasurer (the "State Party") and Lois Murphy for Congress and Katherine A. Rowe, as Treasurer (the "Campaign") to nearly identical complaints filed by the treasurer of the Jim Gerlach for Congress Committee and the chairmen of the Republican Committees of Montgomery, Chester and Berks counties in Pennsylvania.

There is no reason to believe that the State Party used the wrong disclaimer on its mailings or that the mailings did not include substantial volunteer involvement more than sufficient to qualify for the volunteer exemption based on the information provided in the complaints or the facts in this matter. The State Party and the Campaign acted in full compliance with the requirements set forth in the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations. For the reasons stated below, we respectfully request that the Federal Election Commission close this matter with respect to the State Party and the Campaign.

- 1. The State Party used the proper disclaimer for mailings that were authorized by a candidate and that qualified as exempt activity under FEC regulations.**

The State Party's communications included a disclaimer that read "Paid for by Pennsylvania State Committee" contained in a printed box set apart from the other contents of the communication pursuant to 11 C.F.R. §110.11. The complainants incorrectly assert that the disclaimer should also state whether or not any candidate or candidate's committee authorized the communication.

A public communication by a state party committee that is authorized by a candidate and that qualifies as exempt volunteer activity must include a clear and conspicuous disclaimer giving the reader notice of the identify of the political committee that paid for the communication "but the disclaimer does not need to state whether the communication is authorized by a candidate, or any authorized agent of any candidate." 11 C.F.R. §110.11(e). The State Party complied fully with this regulation: (1) the

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Campaign authorized the State Party to send these mailings, (2) the mailings qualify as exempt volunteer activity as described in detail below, and (3) the disclaimer was clearly and conspicuously printed on each piece in full compliance with the Commission's disclaimer requirements at 11 C.F.R. §110.11.

**2. The State Party mailings on behalf of the Campaign included substantial volunteer involvement more than sufficient to qualify as exempt activity under FEC regulations.**

The State Party sent a series of mass mailing communications on behalf of the Campaign including the 11 mailings referenced in the complaint. Each of these State Party mailings included substantial volunteer involvement in order to qualify for the volunteer exemption. The complainants simply assert that because the "mail pieces clearly bear commercially printed labels and postage stamps" that they "do not satisfy the volunteer requirement" ignoring the fact that volunteers can do much more than just stick labels and stamps on mail pieces. The complainants provide no evidence to support their assertion that volunteers did not help produce and distribute the State Party mailings.

The Act defines "contribution" and "expenditure" to exclude payments by a state party committee for the costs of campaign materials. 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii). Payments for communications qualifying for this volunteer exemption are therefore not subject to the Act's limits on a state party committee's contributions or expenditures. To qualify for this exemption, the payments must be "used by such committee in connection with volunteer activities on behalf of nominees of such party." *Id.*

The regulations implementing the volunteer exemption establish that the exemption does not apply to "direct mail," defined as "any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists." 11 C.F.R. §§100.87(a) and 100.147(a). Materials must be "distributed by volunteers and not by commercial or for-profit operations." 11 C.F.R. §§100.87(d) and 100.147(d). In matters involving state party committee mailings under the volunteer exemption, the Commission has focused on the level of volunteer activity discussed below.

(a). The Commission found that there was substantial volunteer involvement to qualify for the volunteer exemption in the following MURs:

- (1). Volunteers affixed a postage mark on each piece, placed a label on them, and took them to the post office (MUR 4851);
- (2). Commercial vendor printed and folded brochures and volunteers sorted, bundled, and delivered them to the post office (MUR 4471);
- (3). Volunteers opened cartons of direct mail materials, stamped the return address and bulk mail permit on each piece, sorted the pieces, and transported them to the post office. A vendor pre-printed the mail piece

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<sup>1</sup> The list used to mail these pieces were derived from the State Party's in house developed voter file and was not derived from any commercial list.

and pre-batched the mailings by zip code and carrier route (MUR 3218); and,

- (4). Volunteers unpackaged, labeled, sorted, bundled and delivered the mailers to the post office (MUR 2377).

(b). The Commission closed the file and found no violation in one matter where volunteers simply bundled and sorted the brochures by zip code (MUR 4754).

(c). In other matters, the Commission found that volunteers were not sufficiently involved in direct mail activities to qualify for the volunteer exemption:

- (1). Volunteers only reviewed the mailing list and inserted the county for each address (MUR 2994); and,
- (2). Volunteers stamped the postal indicia on one mailing but other mailings were mailed by the vendor (MUR 2559).

(d). In this matter, there was more than enough volunteer activity for the State Party to qualify for the volunteer exemption for each mailing:

- (1). Five (5) or more volunteers handled every piece of mail at multiple points throughout the labeling, sorting, bagging, and preparation for delivery process;
- (2). Volunteers opened boxes of literature then bent and folded the pieces to ensure that they did not stick together when they went through an addressing machine that laser printed the addresses on each piece;
- (3). Volunteers continuously filled the machine's hopper with mail pieces to be addressed;
- (4). As mail pieces came through the addressing machine, volunteers bundled them into batches by rubber band and put the bundles into mail bags based on the address that was laser printed on each piece;
- (5). Volunteers closed the mail bags and tagged each one with the U.S. Postal Service "red tag" for priority / political mail;
- (6). Volunteers then carried the tagged bags and placed them on a skid to be moved to another location in the building;
- (7). Volunteers used a pallet-jack to move the skids from the production floor to the warehouse area where a U.S. Postal Service employee would weigh and confirm the count on site to expedite processing the mail;
- (8). Volunteers wrapped the skids in plastic and prepared them for delivery to the U.S. Postal Service's Bulk Mail Center. There were approximately 200 to 400 bags of mail per mailing. Due to the high volume, it was not possible for volunteers to transport the skids of mail to the Post Office in their own vehicles. A truck large enough to handle the volume of mail that could only be operated by a certified driver was used to transport the mail to the U.S. Postal Service's Bulk Mail Center.

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In some matters, the General Counsel's office has discussed the importance of volunteers physically delivering the mail to the post office. In this matter, the volume of mail - 200 to 400 bags - was simply too large for volunteers to safely transport it. Furthermore, due to legal and insurance constraints, only a "certified" driver was permitted to transport the mail from the mail house to the post office. The fact that the volunteers did not physically deliver the bags to the post office in no way diminishes the substantial amount of volunteer activity that they engaged in including: opening cartons of literature, feeding pieces through the addressing machine, bundling, rubber banding, placing bundles in mail bags, carrying bags to skids, "red" tagging bags, moving skids to another part of the building to be weighed and counted, and then wrapping skids in preparation for final delivery.

Attached to this response, please find a declaration of John Rafner, President of Nice Lines, Inc. Mr. Rafner oversaw and witnessed the level of volunteer activity for each of the 11 mailings at issue in this matter. Mr. Rafner attests that there was sufficient volunteer activity for each and every "exempt" mailing undertaken on behalf of the Campaign by the State Party. Also attached to this response are pictures taken during the volunteer preparation of these mailings that show the volunteers assisting with these mailings.

### Conclusion

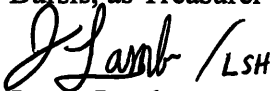
The State Party and the Campaign did not violate the Act or Commission regulations because there was significant volunteer involvement in each of the 11 mail pieces referenced in this matter and the correct disclaimer was clearly and conspicuously printed on each piece. There is no reason to believe that the Pennsylvania Democratic Party and Ann M. Bursis, as Treasurer and Lois Murphy for Congress and Katherine A. Rowe, as Treasurer violated any provision of the Act. We respectfully request that the Commission promptly close this matter with regard to these respondents.

Sincerely,



Neil Reiff

Counsel to the Pennsylvania Democratic Party and Ann M. Bursis, as Treasurer



James Lamb

Counsel to Lois Murphy for Congress  
and Katherine A. Rowe, as Treasurer

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

IN RE

Pennsylvania Democratic Party  
and Ann M. Bursis, as Treasurer

and

Lois Murphy for Congress and  
Katherine A. Rowe, as Treasurer

MUR 5824

MUR 5825

**Declaration of John Rafner**

**This declaration by the President of Nice Lines, Inc. explains that the Pennsylvania Democratic Party mailings on behalf of Lois Murphy for Congress included substantial volunteer involvement more than sufficient to qualify for the volunteer exemption.**

1. My name is John Rafner. I am the President of Nice Lines, Inc. During the 2006 general election, I participated in mailings undertaken by the Pennsylvania Democratic State Committee on behalf of Lois Murphy for Congress, including the eleven (11) mailings referenced in the complaints filed in the above referenced matters. Each mailing included a significant volunteer component consisting of five (5) or more individuals who appeared to handle every piece of mail at multiple points throughout the process.
2. During the mailings, I observed volunteers engaged in the following specific activities:
  - a. Volunteers opened boxes of literature then bent and folded the pieces to ensure that they did not stick together when they went through an addressing machine that laser printed the addresses on each piece;
  - b. Volunteers continuously filled the machine's hopper with mail pieces to be addressed;
  - c. As mail pieces came through the addressing machine, volunteers bundled them into batches by rubber band and put the bundles into mail bags based on the address that was laser printed on each piece;
  - d. Volunteers closed the mail bags and tagged each one with the U.S. Postal Service "red tag" for priority / political mail;

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- e. Volunteers then carried the tagged bags and placed them on a skid to be moved to another location in the building;
  - f. Volunteers used a pallet-jack to move the skids from the production floor to the warehouse area where a U.S. Postal Service employee would weigh and confirm the count on site to expedite processing the mail;
  - g. Volunteers wrapped the skids in plastic and prepared them for delivery to the U.S. Postal Service's Bulk Mail Center; and
  - h. There were several hundred bags of mail per mailing. Due to the high volume and weight, it was not possible for volunteers to transport the skids of mail to the Post Office in their own vehicles. A truck large enough to handle the volume of mail that could only be operated by a certified driver was used to transport the mail to the U.S. Postal Service's Bulk Mail Center.
3. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated above.

  
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John Raffner, President  
Nice Lines, Inc.

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Date

11/30/2006